

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Apple Canyon Utility Company)	
)	
Proposed general increase in water rates)	Docket No. 12-0603
)	
Lake Wildwood Utilities Corporation)	
)	
Proposed general increase in water rates)	Docket No. 12-0604
)	

**REPLY BRIEF ON EXCEPTIONS OF
THE PEOPLE OF THE STATE OF ILLINOIS**

The People of the State of Illinois

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Introduction

The People of the State of Illinois, by Attorney General Lisa Madigan (“People” or “AG”) hereby submit this Reply Brief on Exceptions in response to the Brief on Exceptions (“BOE”) on Behalf of Apple Canyon Utility Company (“Apple Canyon”) and Lake Wildwood Utilities, Inc. (“Lake Wildwood”) (collectively the “Companies” or “Utilities”) and the Brief on Exceptions of the Staff of the Illinois Commerce Commission (“Staff”) in this docket. The People hereby incorporate by reference the arguments raised in their Initial Brief, Reply Brief, and Brief on Exceptions and also note that the failure to comment on or respond to any particular party or issue should not be taken as agreement or disagreement with that party or position.

The Proposed Order Properly Disallowed the Companies’ Requested Pro Forma Additions: The People’s Reply to Companies’ Exception No. 3 and Staff’s Exception No. 1:

The Proposed Order (PO) got it right when it denied the Companies’ requested pro forma plant additions to rate base. PO at 19-20. The ALJ properly interpreted the Companies’ requirement under Part 287.40 of the Illinois Administrative Code (83 Ill. Admin. Code 287.40) to identify and support these pro forma plant additions in direct testimony. PO at 19. The BOE’s of both Staff and the Companies, however, fail to directly address the dispositive issue of whether the requirements of Part 287 apply to small utilities. Therefore, the Commission should reject the arguments presented by Staff and the Companies on this issue and adopt the findings of the PO.

In its Brief on Exceptions, Staff argues simply that the projects for which the Companies are seeking recovery were “necessary” and not “discretionary.” Staff BOE at 2. Although Staff acknowledges that the Companies’ filings were “somewhat delayed,” without further explanation, they conclude that “[t]he Utilities had nothing to gain by circumventing existing Commission Rules.” *Id.* Staff’s argument is without merit as they have not provided any citation to legal authority for such a conclusion and have failed to address the substantive question of whether Part 287 applies to

smaller utilities. The Commission should, therefore, disregard Staff's unsupported argument and approve the PO's conclusions as to the pro forma plant additions as written.

The Companies, for their part, persist in arguing that the requirements of Part 287 do not apply to them as smaller utilities. Companies BOE at 5. The Companies have provided no citation to relevant authority or further arguments, nor have they cited to relevant record evidence to support their position. In contrast, the PO provides thorough and well-supported reasoning for its conclusion that "[t]he Part 285 exemption for small utilities is not included in Part 287" and further notes that the Companies failed to explain this delay. PO at 19. The PO's conclusions are supported by the record evidence, which clearly shows that the Companies had direct knowledge of these proposed plant additions prior to filing their direct case, but inexplicably chose to wait until the filing of their rebuttal testimony to present these additions. PO at 19; AG Initial Brief ("IB") at 12-14. Further supporting the PO's conclusion is the Companies' failure to deny that they did not meet this standard. See Companies BOE at 5. Instead of arguing that the Companies somehow may have met their obligations under the Commission Rules in this case; the Companies chose to recycle the same argument that they raised in their Briefs – the same arguments that were disputed by the People and properly rejected by the PO. The PO appropriately acknowledges the Companies' failure to meet their requirements under Part 287.40 and provides a well-reasoned and legally supported conclusion. Therefore, the Commission should disregard the Companies' arguments and adopt the PO as written on this topic.

Moreover, in making their arguments, the Companies rely on certain facts outside of the record, such as the size of ComEd's and Nicor's staffs dedicated to filing rate case testimony. Companies BOE at 5. Even if such a fact were not outside of the record, it is completely irrelevant in the instant case. The Commission must disregard any facts outside of the record. Based on the foregoing argument as well as that presented in the People's briefs, the Commission should adopt the

PO as written on the issue and deny Apple Canyon's requested \$25,000 for repairs to Well #1 and Lake Wildwood's requested \$80,000 for repairs to the treatment plant.

The PO properly disallowed the Boundary and Leak Surveys: The People's Reply to Companies' Exception No. 2.

The PO properly disallowed the Companies' request to recover, in rate base, expenses associated with leak surveys and boundary surveys. PO at 12-13. As to the leak surveys, the PO concluded that the Companies inappropriately classified the costs as capital costs and that the costs occurred outside of the test year – in fact, several years prior to the test year. *Id.* at 13. As to the Boundary Surveys, the PO properly concluded that it is “inappropriate for the Companies to attempt to recover these costs considering the Commission's Orders approving the expansions of service.” PO at 13.

The Companies, in their BOE, do not address the merits of the PO's findings or the merits of Staff and the People's arguments. Companies BOE at 3. Rather, the Companies present the same policy-based argument that they presented in their briefs (*Id.*) – the very arguments that were refuted by the People and Staff and rejected by the ALJ in the PO (AG IB at 18-19; Staff IB at 5-6; PO at 13). The People and Staff demonstrated in their respective briefs that the Companies failed to support the costs associated with these surveys. AG IB at 18-19; Staff IB at 5-6. The Companies provided no record evidence to tie the leak costs in to a capital project and, in their briefs, did not respond to this failure to support their requests. Companies BOE at 3. This decision, as noted in the People's Initial Brief, represents “arbitrariness” and a failure to follow established accounting procedures. AG IB at 18. The PO properly disallowed these costs and provided a well-reasoned and supported conclusion and the People urge the Commission to adopt the PO as written as to the boundary and survey costs.

The PO properly disallowed the Companies' Appeal Costs: The People's Reply to Companies' Exception No. 4.

The PO adopted the adjustment presented by the People and Staff, and properly denied recovery for the Companies' costs associated with an appeal of a prior rate case. The PO concluded that the costs were not associated with the preparation of a rate case, and, thus, not allowable under section 9-229 (220 ILCS 5/9-229); were not a normal operating expense; and "the Utilities have already attempted to recover more rate case expense for the 2009 rate case than was approved by the Commission and agreed to by the Utilities." PO at 27-28. The record evidence supports the PO's conclusions and should be adopted by the Commission.

Instead of addressing the PO's well-reasoned conclusions, however, the Companies, in their BOE, merely rehash the same unsupported argument that they "would not have incurred the costs of the appeal but for the fact that the Attorney General and Intervenors sought appellate court review of the Commission's Order" because their time to initiate an appeal had expired. Companies BOE at 6. This claim has been soundly refuted by both the People and Staff and is rebutted by the record evidence. Although the Companies continue to claim that they were merely defending an appeal, they have, throughout this docket, steadfastly failed to acknowledge, as the record shows, that they filed a cross-appeal that raised new issues above and beyond the issues already raised. AG IB at 24; Staff IB at 15-16. Therefore, there is no support for the Companies' argument and it should be rejected by the Commission.

The record evidence further supports the PO's additional conclusion that the Companies spent an amount in excess of the previously approved amount for rate case expense. See Staff IB at 15. Moreover, as demonstrated in the People's Briefs, the majority, if not all, of the costs associated with the appeal of the prior rate cases would have already been incurred and paid prior to the end of the test year. AG IB at 23. Therefore, the PO adopted the only supportable and

equitable conclusion: denying the costs of the appeal. The PO properly disallowed the costs associated with the Companies' appeal and the Commission should adopt the PO as written on this subject.

The Proposed Order Should Reject the Companies' Arguments Regarding Invested Capital Tax: The People's Reply to Companies' Exception No. 1

The People herein adopt and incorporate the discussion of this issue from the "Cash Working Capital" section in their Brief on Exceptions and urge the Commission to reject the conclusions of the PO on this issue. AG BOE at 6-7.

The People's Reply to Companies' Exception No. 5

The People agree with Staff and the Companies proposed corrections to remove Finding 12 from the Proposed Order.

Conclusion

WHEREFORE, for the reasons stated above, and in the Exceptions and Brief on Exceptions, Initial Brief, and Reply Brief of the People of the State of Illinois, the Commission should order that Apple Canyon's and Lake Wildwood's new rates be set at levels that reflect the changes requested.

Respectfully Submitted,
The People of the State of Illinois

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